

EXHIBIT A-11

Whitaker, Dolly D.

From: Eric Magee <e.magee@allison-bass.com>
Sent: Friday, September 15, 2023 4:07 PM
To: Leigh Tognetti; Ecklund, Jennifer R.
Cc: Jonathan Mitchell; Heather Gebelin Hacker; jirlbeck@lubbockcounty.gov; nburt@lubbockcounty.gov; leslie.dippel@traviscountytx.gov; Tony.Nelson@traviscountytx.gov; Andrew Stephens; Josephine.ramirez@da.co.hidalgo.tx.us; lisa.cubriel@bexar.org; Robert.piatt@bexar.org; cynthia@ccglaw.net; Jed (John) Untereker; Myers, Elizabeth G.; Lowell, Allyn J.; Atkins, John P.; amy.ybarra@traviscountytx.gov; Alexandra Albright; mgreer@adjtlaw.com; kdubose@adjtlaw.com; kcastaneda@adjtlaw.com; Hannah Roblyer; ronisha.sims@traviscountytx.gov; gabe.hodge@traviscountytx.gov
Subject: RE: Fund Texas Choice v. Garza - 26(f) discussion

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Ms. Ecklund:

On behalf of Defendants McAfee, Deski, Weber, Renken, Glaser and Sinclair, I agree with the responses provided concerning the understanding of no discovery while the motions to dismiss are pending. We will not be providing a response to the email. Please advise if your position has changed concerning discovery.

J. Eric Magee
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From: Leigh Tognetti <leigh.tognetti@da.co.hidalgo.tx.us>
Sent: Friday, September 15, 2023 4:02 PM
To: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>
Cc: Jonathan Mitchell <jonathan@mitchell.law>; Heather Gebelin Hacker <heather@hackerstephens.com>; jirlbeck@lubbockcounty.gov; nburt@lubbockcounty.gov; Eric Magee <e.magee@allison-bass.com>; leslie.dippel@traviscountytx.gov; Tony.Nelson@traviscountytx.gov; Andrew Stephens <andrew@hackerstephens.com>; Josephine.ramirez@da.co.hidalgo.tx.us; lisa.cubriel@bexar.org; Robert.piatt@bexar.org; cynthia@ccglaw.net; Jed (John) Untereker <JUntereker@epcounty.com>; Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; amy.ybarra@traviscountytx.gov; Alexandra Albright <Aalbright@adjtlaw.com>; mgreer@adjtlaw.com; kdubose@adjtlaw.com; kcastaneda@adjtlaw.com; Hannah Roblyer <hroblyer@adjtlaw.com>; ronisha.sims@traviscountytx.gov; gabe.hodge@traviscountytx.gov
Subject: Re: Fund Texas Choice v. Garza - 26(f) discussion

Ms. Ecklund:

Hidalgo County shares the concerns expressed by other counsel. If Plaintiffs have changed their position and intend to seek discovery while the motions to dismiss are pending, please serve your requests in accordance with the Federal Rules of Civil Procedure. Otherwise, DA Palacios will not be responding.

Have a nice weekend,

Leigh Ann Tognetti

Assistant District Attorney

Civil Division

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On Tue, Sep 12, 2023 at 2:16 PM Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com> wrote:

Counsel:

Attached is a shell 26(f) conference report for your review and inclusion of issues, and we have highlighted the specific places where your input is affirmatively required. Please let me know your comments and thoughts.

While we discussed in our 26(f) conference on August 31, 2023 that extensive discovery was not necessary to resolve the legal issues in this case, Mr. Mitchell did not attend that conference and therefore did not voice his own view on that topic. Plaintiffs' counsel received the attached discovery via email today from Mr. Mitchell on behalf of Defendant Shannon Thomason. It does not appear that you all were copied on that email, so I am providing copies of the discovery to you now. You will see that much of the discovery relates to conduct that Mr. Mitchell and Mr. Thomason assert may form the basis for criminal or civil liability under Texas law, depending on how it is interpreted (the ultimate issues in this case). Because Mr. Mitchell and Mr. Thomason are seeking information related to what they believe are violations of the criminal laws of Texas, Plaintiffs request that each of your clients review and respond in writing by COB on Friday, September 15:

1. Whether he or she believes the conduct described in this discovery is criminal under the Trigger Ban;

2. Whether he or she believes that the conduct described in this discovery is criminal based on the pre-*Roe* statutes declared void by *Roe v. Wade*;
3. Whether he or she will agree to not prosecute any Plaintiff under the criminal laws of Texas based on any information that is obtained through the course of this discovery; and
4. What impact, if any, Section 87.011(3)(B) of the Texas Local Government Code has on your client's ability to answer the three items above.

In addition to these responses, please feel free to propose additions or edits to the draft 26(f) report in light of the issues raised in these discovery requests.

Thank you—

Jenny

Jenny Ecklund

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From: Jonathan Mitchell <jonathan@mitchell.law>

Sent: Monday, September 11, 2023 9:47 PM

To: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>

Cc: Heather Gebelin Hacker <heather@hackerstephens.com>; jirlbeck@lubbockcounty.gov; nburt@lubbockcounty.gov; e.magee@allison-bass.com; leslie.dippel@traviscountytx.gov; Tony.Nelson@traviscountytx.gov; Andrew Stephens <andrew@hackerstephens.com>; Josephine.ramirez@da.co.hidalgo.tx.us; leigh.tognetti@da.co.hidalgo.tx.us; lisa.cubriel@bexar.org; Robert.piatt@bexar.org; cynthia@ccglaw.net; Jed (John) Untereker <JUntereker@epcounty.com>; Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>

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Jenny:

Thanks for taking the lead on drafting this. For #2, could you please include the following:

“The SB 8 defendants intend to move to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) if the Court denies their pending motion to dismiss for lack of venue and improper joinder.”

For #8, could you please include the following:

“Whether and to what extent the plaintiffs are engaged in activities that violate SB 8 or the state’s criminal abortion bans.”

Thanks for considering this, and we look forward to seeing your draft.

—Jonathan

On Aug 31, 2023, at 1:00 PM, Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com> wrote:

Thanks to those of you who were able to attend the conference today. I am attaching the format contained in Appendix N of the WDTX Civil Rules. For those of you who had conflicts for the discussion today, we agreed generally that Plaintiffs would draft a 26(f) report in accordance with this, and Defendants would provide input/their desired language for #2 specifically, and of course, we can incorporate any additional input you’d like to and discuss at our next conference.

Jonathan—I know your clients may have different input/interests than others, happy to discuss further with you should you like to confer before commenting on the draft as well.

I will be out next week, but our team will get this ball rolling, and hopefully we can nail down a version we are all comfortable with and meet again to confirm in a week or so.

Best wishes,

Jenny

Jenny Ecklund

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<Appendix N - Joint Federal Rule Of Civil Procedure 26 Report.pdf>

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